

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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:
SIMRET SEMERE TEKLE, : Civil Action No.
:
Plaintiff, : 1:18-CV-211
:
versus :
:
NOUF BIN NAYEF ABUL-AL SAUD, et al, :
:
Defendants. : September 7, 2018
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The above-entitled Motions was continued before
the Honorable T.S. Ellis, III, United States District Judge.

A P P E A R A N C E S

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P R O C E E D I N G S

(Court proceedings commenced at 12:10 p.m.)

THE DEPUTY CLERK: Simret Semere Tekle versus Nouf bin Nayef Abul-Al Saud, et al. Criminal Case No. 1:18-CV-211.

THE COURT: All right. Who is here for the plaintiff?

MR. MARRITZ: Nicholas Marritz from the Legal Aid Justice Center, Your Honor.

THE COURT: This is the plaintiff, yes? You're here for the plaintiff?

MR. MARRITZ: Yes, Your Honor.

THE COURT: Your name, sir.

MR. MARRITZ: Nicholas Marritz from the Legal Aid Justice Center.

THE COURT: All right, sir. Who will argue today?

MR. MARRITZ: That will be Agnieszka Fryszman of Cohen Milstein. With me at counsel table are Alex Langlinais and Richard Levy of Jenner and Block.

THE COURT: All right. And who, again, will argue?

MS. FRYSZMAN: I will, Your Honor.

THE COURT: You say that reluctantly as if having seen what happened in the previous argument. You now are concerned about whether you should put your head on the chopping block. Don't worry about it. In fact, you should take this seat because you're going to argue.

1 And who is here for the defendants?

2 MR. NASH: Good afternoon, Your Honor. Stuart Nash
3 for the defendants. I'm here with my colleagues David Haller
4 and John Brownlee.

5 THE COURT: All right. And Mr. Nash I assume you
6 will argue.

7 MR. NASH: That is correct.

8 THE COURT: All right. Just as a matter of
9 disclosure, I happen to know Mr. Nash. I know Mr. Nash
10 because he served as my law clerk nearly 30 years ago. But I
11 don't recuse myself in cases involving former law clerks, much
12 to their dismay. So we're going to proceed.

13 Does that present a problem for the plaintiff?

14 MR. LEVY: It does not, Your Honor.

15 THE COURT: Thank you. All right.

16 Now, the issue today, as I see it, distilled to its
17 essence, is whether the plaintiff can proceed on its breach of
18 contract claim despite the fact that the statute of
19 limitations has essentially, by agreement, run, because the
20 plaintiff believes that it has alleged sufficient facts to
21 warrant the invocation of the tolling provision and that it
22 should be tolled. And, essentially, the plaintiff argues that
23 blandishments or threats, or whatever they're called, were
24 made to another relative. And that that should be construed
25 as -- as, in effect, threats not to file this lawsuit. And,

1 therefore, tolling should apply. I don't think there's much
2 dispute that tolling might apply. The dispute is whether
3 facts alleged in the complaint are sufficient to warrant or
4 justify the tolling provision. And so we have a motion to
5 dismiss.

6 So, Mr. Nash, you're first. Do I have the issue
7 essentially correct?

8 MR. NASH: You are correct, sir, Your Honor, as it
9 relates to the statute of limitations argument that we've
10 made. We've made an independent -- advanced independent
11 grounds for dismissal of the complaint on the basis that it
12 was not properly pled as a breach of contract claim.

13 THE COURT: All right. Those, I'm interested in.
14 The motion to strike material because its scandalous, and
15 there's one other motion, I think.

16 MR. NASH: There is the motion to dismiss, which
17 we're discussing, where there's two independent grounds that
18 we're advancing for dismissal of the Count 5 of the complaint.
19 There's a separate motion to strike the immaterial material,
20 pursuant to Rule 12 related to --

21 THE COURT: I'll decide that on the papers. You-all
22 don't need to address that. But I do want to hear argument on
23 the statute of limitations and the motion to dismiss.

24 Are there any other motions, Mr. Nash?

25 MR. NASH: There are no other pending motions.

1 THE COURT: All right, sir. Go ahead.

2 MR. NASH: Your Honor, you have framed the argument
3 exactly correctly in my view. We believe that this case is
4 very clearly controlled under the Iqbal Twombly standard.
5 And, as you know, the Iqbal case related to an allegation by a
6 detainee in the wake of September 11th that he had been
7 discriminated against based on his race and national origin
8 and religion and had been subjected to enhanced detention.

9 THE COURT: You don't need to go over those facts
10 with me.

11 MR. NASH: Well, but what I think is important in
12 that case, the plaintiff was subject to a motion to dismiss,
13 the plaintiff said, Well, I've pled it right here, I was
14 discriminated based on my race and national origin. It's
15 right here in the complaint.

16 The Supreme Court said, "Hold on. We don't accord
17 deference, we don't presume the truth of conclusory
18 allegations or allegations that relate to legal conclusions."

19 And that's exactly the situation that we have here,
20 Your Honor. The plaintiff says that they have pled factual
21 allegations that are presumed to be true. And it is true that
22 they have pled some factual allegations and we're prepared to
23 accord a deference to those and allow those -- allow Your
24 Honor to presume those to be true. But none of those
25 allegations relates to any conduct, whatsoever, by the

1 defendants in this case. And the tolling statute requires
2 that there be an affirmative act by the defendants that had
3 both the intent and the effect of obstructing the plaintiff
4 from filing her suit.

5 There is no factual allegation made anywhere in the
6 complaint that alleges that our clients did anything, until
7 you get to paragraph 64 and 65 of the complaint, where, in a
8 completely conclusory fashion, the plaintiff alleges that
9 threats were made and the threats were made to -- with the
10 intention of preventing Ms. Tekle from filing suit.

11 THE COURT: That's an allegation of fact, isn't it?

12 MR. NASH: It is not, Your Honor.

13 THE COURT: The threats were made is not an
14 allegation of fact.

15 MR. NASH: It would -- I think it's important, Your
16 Honor. I've printed out to hand up to you the allegations
17 related to equitable tolling in the complaint. It only runs
18 to two pages of the complaint.

19 THE COURT: I'm familiar with it.

20 MR. NASH: So it begins --

21 THE COURT: What I'm asking you is: Isn't an
22 allegation that A threatened B an allegation of fact?

23 MR. NASH: In exactly the same way that in Iqbal,
24 when the -- when the plaintiff alleged that Attorney General
25 Ashcroft discriminated against me on the basis of my race and

1 religion --

2 THE COURT: You don't see any difference between
3 those two?

4 MR. NASH: Not, not --

5 THE COURT: All right. Let's go on. I do. But
6 let's go on.

7 MR. NASH: Well, Your Honor, the --

8 THE COURT: Well, isn't it also alleged that there
9 was communications with her aunt, was it, or somebody related
10 to her -- employed in another household?

11 MR. NASH: The only factual allegations -- the only
12 single factual allegations related to an affirmative act that
13 the -- that our clients made, was in paragraph 61 of the
14 complaint on information and belief the defendants informed
15 Princess Maha, who is not a defendant in this action, is not
16 implicated in this action in any way. On information and
17 belief, the defendants informed Princess Maha, who is
18 defendant's mother, that Ms. Tekle had escaped from their
19 compound in Virginia. That is the sole factual allegation
20 related to conduct by the defendants in this matter. That
21 they called someone up in Saudia Arabia and said Ms. Tekle is
22 gone. And so there's that factual allegation.

23 And the only other thing they say is, then, this
24 woman that they purportedly called in Saudia Arabia, then
25 called Ms. Tekle's family up and began asking questions of:

1 Do you know what happened to her? Where did she go? Do you
2 know what her plans are? Is what the allegations are.

3 Those are -- those are what is spun up by the
4 plaintiff into a threatening, menacing communications by our
5 clients. And there is no affirmative act pled that -- that
6 even the allegation that they called Princess Maha, they
7 qualify that by saying "upon information and belief." They
8 don't know that that happened. "Upon information and belief"
9 is a curious phrase that we've all used it. I've used it
10 myself. But upon information and belief, those are two
11 entirely different things. You either plead something upon
12 information, which means you have facts that back up your
13 allegation or you pleaded upon belief, which means you don't
14 have the facts, but you believe that it might --

15 THE COURT: This is typically in the conjunctive.

16 MR. NASH: Well, in this case it is in the
17 conjunctive.

18 THE COURT: All right. So they had information and
19 they had a belief.

20 MR. NASH: Well, they list all their information,
21 Your Honor.

22 THE COURT: All right. Let's short-circuit this.
23 Let me hear from the plaintiffs.

24 What are the facts that have been alleged that
25 you've relied on?

1 He says there aren't any facts and he's pointed out,
2 pointed specifically to the allegations that says, in effect,
3 that they don't know, but they believe that they called this
4 other person who's not a member of the defendant's family or
5 at least not the immediate family, and he says that's just not
6 enough to constitute a threat.

7 MS. FRYSZMAN: So as an initial matter, the statute
8 permits tolling when defendants act indirectly or directly --
9 I mean, indirect or direct method. So the defendants don't
10 have to make a direct phone call. They can ask --

11 THE COURT: But you have to link it to them.

12 MS. FRYSZMAN: Yes. And so we've got several
13 tolling allegations. And those are as follows: One, the only
14 way the defendants had to connect to Mrs. Simret --
15 Mrs. Tekle, the plaintiff --

16 THE COURT: I'm sorry. Speak up.

17 MS. FRYSZMAN: The only method that the defendants
18 had to reach Mrs. Tekle, the plaintiff, was through
19 Mrs. Gebreyesus, the so-called aunt. The so-called aunt
20 actually owned Mrs. Tekle's parents' home in Eritrea. She was
21 their landlady. She's not a blood relative. She owns the
22 home. And that's in paragraph 11.

23 The plaintiff then -- the complaint alleges that the
24 defendants' acted to obstruct Mrs. Tekle from enforcing her
25 rights by threatening Mrs. Gebreyesus and asking her to

1 contact Simret to prevent her from filing. That's in
2 paragraph 65.

3 The complaint alleges that --

4 THE COURT: Read me 65.

5 MS. FRYSZMAN: 65. And that's one of the
6 information. It is on information and belief. Mrs.
7 Gebreyesus made several calls to Ms. Tekle's family asking
8 about Ms. Tekle's whereabouts and intentions at the
9 defendants' behest. Whereas, the result of actions of the
10 defendants or their agents and were made with the intention of
11 preventing Ms. Tekle from filing suit.

12 The complaint alleges in paragraph 57 that Mrs.
13 Gebreyesus herself said that she had been threatened. And
14 that in paragraph 8 that she repeatedly called asking what
15 Mrs. Tekle planned to do, where she was, and how to contact
16 her. The defendants argued on reply that this could plausibly
17 be read as concern for her niece. But the fact is that
18 Mrs. Tekle's family has viewed those calls as threatening,
19 refused to provide that information to Mrs. Gebreyesus, told
20 Mrs. Tekle about it. Mrs. Tekle was terrified. That's in
21 paragraph 58.

22 In paragraph --

23 THE COURT: Is that in the complaint?

24 MS. FRYSZMAN: Yes, it is. It's in paragraph 58,
25 Your Honor.

1 THE COURT: It says she was terrified?

2 MS. FRYSZMAN: Yes. And in paragraph 55, we believe
3 that she was so afraid she stayed in hiding and rarely left
4 the house in Virginia where she was hiding. And then the next
5 thing that Mrs. Gebreyesus did, and this is in paragraph 60,
6 is she attempted to evict Mrs. Tekle's family from their home.
7 That is not the act of a concerned person who is trying to be
8 kind to her niece. Those are threatening acts designed to
9 intimidate and threaten the plaintiff.

10 And those are the allegations in the complaint, Your
11 Honor.

12 THE COURT: All right. That's helpful. And you
13 think that's sufficient?

14 MS. FRYSZMAN: I do. I also think this standard
15 that governs this argument is the one that the Fourth Circuit
16 discussed in *Goodman v. Praxair* and that this Court adopted
17 last year in *McPike v. Zero Gravity*. And that standard is
18 that when the defendant seeks to dismiss a complaint, based on
19 an affirmative defense, the standard is tolling foreclosed.

20 THE COURT: Yes, I'm familiar with that.

21 MS. FRYSZMAN: In the complaint.

22 THE COURT: Let me go back to Mr. Nash and have Mr.
23 Nash address that point. That is the point that whether the
24 arguments you've made foreclosed tolling. That's your burden.

25 MR. NASH: It is our burden, consistent with the

1 Iqbal Twombly standard. And what Ms. Fryszman has pointed
2 are, as I've pointed out, there are paragraphs 56 through 63,
3 all make factual allegations. And every one of those factual
4 allegations do not mention our clients. Do not identify
5 anything affirmative that our clients did, with the exception
6 of the one that I raised to you, which is they called -- they
7 allegedly called, upon information and belief, they allegedly
8 called Ms. Gebreyesus up and said, "The plaintiff has left our
9 house."

10 THE COURT: Well, let me clarify that. As you say
11 you've used it. Everyone has used "on information and
12 belief." But that's a factual allegation.

13 MR. NASH: Fair enough.

14 THE COURT: And it's a factual allegation that if
15 it's not true and there is no basis for it, Rule 11 punishes
16 that. So it is a fact that it must be accepted at this stage.

17 MR. NASH: I agree with that.

18 THE COURT: That's --

19 MR. NASH: That is factual allegation and we accept
20 that as true.

21 THE COURT: That's good. Go ahead, sir.

22 MR. NASH: All of those facts and everything that
23 Ms. Fryszman just talked about the plaintiff being terrified,
24 about the -- Ms. Gebreyesus's apparently trying to evict them
25 from their house in Eritrea, all of those are factual

1 allegations, and all of them the Court is required to accept
2 as truthful in the course of these proceedings. We understand
3 that. We do not believe them to be true, but we understand
4 that at this preliminary stage of the proceedings, you have to
5 accept those as true.

6 None of those relate to any affirmative act by our
7 clients to do anything to the plaintiff. None of those
8 factual allegations. So that's 56 through 63. Then you get
9 to the last two paragraphs, paragraph 64 and paragraph 65.
10 And what those paragraphs say, in the most conclusory fashion
11 possible, is the defendants, upon information and belief, were
12 responsible for everything that we have just laid out in 56
13 through 63.

14 There's no basis -- and what Iqbal says is that
15 there has to be a factual basis for the Court to find that
16 element is plausible.

17 THE COURT: Is there any relationship between the
18 defendant and these people who are being contacted?

19 Are they the same family or anything of that sort?

20 MR. NASH: The facts, you -- the facts as laid out
21 in the complaint are that this woman, Ms. Gebreyesus, had
22 worked for a branch of the Saudi royal family for a number of
23 years. She knew the plaintiff, having come from the same
24 small town in Eritrea. And at some point, she reached out to
25 the plaintiff and said, "Would you like me to come to Saudi

1 Arabia to work for the Saudi royal family?" That woman is Ms.
2 Gebreyesus and she was responsible for bringing the plaintiff
3 to work in Saudi Arabia.

4 Apparently, according to the complaint, the work
5 situation for the plaintiff in Saudia Arabia was not pleasant.
6 And she did not like the work that she was doing in Saudia
7 Arabia and so she reached out to our clients, who she
8 understood were coming to America, and said, "Will you take me
9 to the United States?"

10 And our clients said, "Yes, we will take you from
11 this relative that you're working for and bring you to the
12 United States," which is what they did.

13 After seven months of being here in the United
14 States, the plaintiff walked away from the family, went --
15 where our clients knew not where. And the allegation in the
16 complaint is upon that point of time, they called back to
17 Saudia Arabia to Ms. Gebreyesus -- and this is in the
18 complaint --

19 THE COURT: Who called back?

20 MR. NASH: The one affirmative act that is listed in
21 the complaint is --

22 THE COURT: Who called back?

23 MR. NASH: That our clients phoned Ms. Gebreyesus
24 and said, "Ms. Tekle is gone."

25 That's the affirmative act that is listed in the

1 complaint. "Ms. Tekle is gone."

2 And what the plaintiff says is that Ms. Gebreyesus
3 then called Ms. Tekle's family in Eritrea and said, "Do you
4 know where she is? Do you know what's happened to her?"
5 Ms. Tekle says she was terrified by those calls because she
6 believe that it was some -- that there was some intention to
7 find out where she was to do some undisclosed thing to her.

8 What we have said is it's perfectly natural for Ms.
9 Gebreyesus to call the family up and say -- this is someone
10 who is identified in the complaint as close enough that she
11 refers to Ms. -- to the plaintiff as her niece. Perfectly
12 natural to call up and say, "You know what happened to -- do
13 you know where she is? She's in a foreign country. No one
14 has heard from her. Do you know what's happened to her?"
15 It's completely unreasonable to spin this up as some menacing
16 call.

17 But we have -- we realize we're in a posture where
18 we have to accept even unreasonable positions in the
19 complaint. What we're saying is there is no evidence, there
20 is nothing that is pled in the complaint that suggests that
21 the calls from Ms. Gebreyesus to the plaintiff's family in
22 Eritrea were motivated or directed or in any way, in effect,
23 of the cause of our client's doing or saying anything.

24 There's just nothing in the complaint that says our
25 clients told Ms. Gebreyesus to do anything. There's lots in

1 the complaint about the subjective views of Ms. Tekle, the
2 plaintiff, saying, "I was scared; I was afraid." That's not
3 the standard. You can't evade the statute of limitations by
4 saying, Subjectively, I was concerned that something might
5 happen to me if I filed lawsuit.

6 What the statute says is: There has to be an
7 affirmative act by the defendants that causes a legitimate
8 fear on the basis of the plaintiff. And the -- the complaint
9 is absolutely deficient in saying that our clients did
10 anything to engender this fear in Ms. Tekle.

11 THE COURT: All right. Let me hear one last time
12 from the plaintiff and then we'll go on to one other issue.

13 MS. FRYSZMAN: Your Honor, as this Court concluded
14 in the *McPike* case --

15 THE COURT: In which case?

16 MS. FRYSZMAN: *McPike v. Zero-Gravity Holdings*, 280
17 F.Supp.3d 800.

18 THE COURT: I'm sorry. Can I hear the name of the
19 case again?

20 MS. FRYSZMAN: *McPike v. Zero-Gravity*.

21 THE COURT: This is the around the moon case?

22 MS. FRYSZMAN: Yes. The guy on the moon flight.

23 THE COURT: Yes.

24 MS. FRYSZMAN: So as in that case, these questions
25 are questions of fact. And to quote Your Honor, they cannot

1 be resolved on the face of plaintiff's complaint, because
2 these are alleged facts that could cause reasonable jurors to
3 disagree as to when, in the reasonable exercise -- that case
4 was about due diligence, here, it's about tolling -- that
5 could cause reasonable jurors to disagree about whether the
6 threats made --

7 THE COURT: Have you alleged anything that says --

8 MS. FRYSZMAN: We have. And --

9 THE COURT: Just a minute. Wait until I finish.
10 Have you alleged anything that says that Mr. Nash's clients
11 did any of this?

12 MS. FRYSZMAN: We have, Your Honor. The statute,
13 again, permits indirect or direct methods. We allege that the
14 defendants used Mrs. Gebreyesus as their method to reach our
15 client and threaten her. The defendants don't have to make
16 the threat directly. The statute says "indirect" right in it.
17 In the word. It says, "indirect method." They used Mrs.
18 Gebreyesus to make the threats.

19 In fact, Mrs. Gebreyesus said she had been
20 threatened. And we have that in paragraph 57 when she called
21 the family. She said that she had been threatened. And the
22 family took those as threats when Mrs. Gebreyesus asked for
23 Ms. Tekle's contact information and asked what she had
24 planned. The family refused to provide it, because they felt
25 it was a threat.

1 So these aren't entirely subjective usings. The
2 family felt it was a threat. They did not provide the
3 information to Mrs. Gebreyesus. Mrs. Gebreyesus kept calling
4 and asking where Ms. Tekle was. Ms. Tekle stayed in hiding.
5 That's in paragraph 55. And then Ms. Gebreyesus tried to
6 evict the family. And that's in paragraph 60.

7 In the *Deressa* case, in this jurisdiction, a Court
8 found that threats of deportation were sufficient to prevent a
9 plaintiff from exercising their rights.

10 The threat does not have to be the sort of direct
11 threat by the defendant to say, Please don't file a suit, the
12 way Mr. Nash is saying. The threats can simply be enough to
13 frighten and impede a person from exercising their rights as
14 they were in *Deressa*. And certainly, the allegations here are
15 more than plausible. A reasonable jury could infer that the
16 things happened the way that we said, that these weren't the
17 kind overtures of the concerned fellow Eretreans, but were, in
18 fact, designed to be threatening, were heard by the family to
19 be threatening, or felt as threatening to Mrs. Tekle, the
20 plaintiff.

21 And, in fact, were so frightening that when she
22 eventually went to law enforcement in April of 2013, she told
23 law enforcement that she was afraid contemporaneously, well
24 before this suit was filed.

25 And that allegation, I believe --

1 THE COURT: All right. Thank you. Let me move on
2 to another issue.

3 MS. FRYSZMAN: Thank you.

4 MR. NASH: Your Honor, I just want to clarify one
5 thing. When Ms. Fryszman says that Ms. Gebreyesus was
6 threatened, the complaint does not say threatened by our
7 clients. The entire -- the entire factual assertion that she
8 just went through with Your Honor is in the complaint and you
9 can see for yourself, but every one of the allegations does
10 not relate to any affirmative act by our clients.

11 THE COURT: All right. Let me ask one question,
12 Ms. Fryszman. I take it that -- well, have you alleged all
13 the facts that you know of? In other words, if I gave you an
14 opportunity to amend, could you amend to add anything further?

15 MS. FRYSZMAN: We could, Your Honor. If given the
16 --

17 THE COURT: What would you amend to say?

18 MS. FRYSZMAN: We would --

19 THE COURT: You have to wait. She can only get one
20 of us at a time. You have to wait until I finish.

21 What is it that you could allege?

22 MS. FRYSZMAN: We could allege more specificity
23 about the threats that were made. We do allege in paragraph
24 64 that on information and belief, threats were made against
25 Mrs. Gebreyesus at defendants' behest.

1 THE COURT: What would you allege if I gave you an
2 opportunity to do it, further, about the threat? Could you
3 allege who made the threat?

4 MS. FRYSZMAN: Well, for one, we would need
5 discovery to do that.

6 THE COURT: I'm sorry. Can you answer my question?

7 MS. FRYSZMAN: Yes. We would need discovery to do
8 that, because a lot of that information is solely in the hands
9 of the defendants. Mrs. Gebreyesus is currently employed by
10 the defendants. We have no ability to contact her and no
11 ability to reach her to ask her questions. So, certainly,
12 discovery would determine what threats were made and what she
13 said she said. It's impossible to know, without discovery,
14 the interworkings of defendants' household. All we can plead
15 is what our client knows and what her family knows and what
16 they heard. And we can certainly make --

17 THE COURT: And tell me again. Just a moment. I
18 have the privilege of interrupting. You've got to persuade
19 me.

20 What's the relationship between the person working
21 in the defendant's household and the plaintiff?

22 MS. FRYSZMAN: She's the landlady of plaintiff's
23 parents in Eritrea. And --

24 THE COURT: No familial relationship?

25 MS. FRYSZMAN: There's no blood relationship. They

1 call each other auntie, but I believe that's a cultural term.

2 THE COURT: But she is an employee of the family of
3 the defendant?

4 MS. FRYSZMAN: Of the mother.

5 THE COURT: All right. Go on.

6 MS. FRYSZMAN: I'm sorry. I lost your question.

7 THE COURT: Yes. What is it that you would amend to
8 say that isn't already in this fairly extensive complaint?

9 MS. FRYSZMAN: I think if Your Honor thought we
10 needed greater specificity as to the threats, we would
11 re-interview the witnesses and seek to amend and add
12 specificity. But as I said, we don't have an ability. We
13 would need discovery to find out whether the defendants
14 directed those threats and what exactly was said by Mrs.
15 Gebreyesus. We have no ability to contact her.

16 So there really is no way to allege beyond on
17 information and belief what defendants did, because we're --

18 THE COURT: All right. You've also raised the
19 issue, I think appropriately, for me to consider that the
20 defense of the statute of limitations, the argument that it
21 applies, would have to be foreclosed. In other words, the
22 tolling would have to be foreclosed.

23 Is that right?

24 MS. FRYSZMAN: That's correct. That's in *Goodman v.*
25 *Praxair* and the *McPike* case.

1 THE COURT: Tell me what your argument is about
2 that, very briefly.

3 MS. FRYSZMAN: That's a high standard. That --

4 THE COURT: What has to be foreclosed?

5 MS. FRYSZMAN: That our -- the words of *Goodman v.*
6 *Praxair* is that our rejoinder, taking the complaint as a whole
7 and any possible allegations in the complaint, has to
8 foreclose our tolling argument. And that's just not the case
9 here.

10 THE COURT: All right. Mr. --

11 MS. FRYSZMAN: Because it's an affirmative defense,
12 so we don't have to defeat it on the pleadings.

13 THE COURT: Last word, Mr. Nash. You're the movant,
14 you have the burden of persuasion.

15 MR. NASH: Tolling is foreclosed, Your Honor,
16 because the plaintiff has not pled any allegation that --

17 THE COURT: But you concede, of course, that that is
18 the standard, is foreclosing?

19 MR. NASH: You've written it, Your Honor, so I'm not
20 going to argue that it should be anything else. But I think
21 the word that the -- the concept of foreclosed has to be read
22 in conjunction with the *Iqbal Twombly* standard. Which means
23 that just because -- as in *Iqbal*, when the plaintiff in *Iqbal*
24 said, "Ashcroft discriminated against me because of my race
25 and national origin," the Supreme Court said that is not --

1 should not be accorded deference because it's not a factual
2 allegation.

3 Here, there are a number of factual allegations that
4 the plaintiff has made.

5 We are -- we understand that all of those are
6 entitled to deference, but when it comes to the affirmative
7 acts that the defendants made, to put any of this into motion,
8 they have not produced any evidence to the Court and the only
9 thing they have said is a conclusory statement that, Oh, and
10 everything that we've just said that Mrs. Gebreyesus did on
11 information and belief, we think that the defendants are
12 responsible for that. And that does not satisfy the Iqbal
13 Twombly standard. And because it doesn't satisfy the Iqbal
14 Twombly standard, the plaintiffs are precluded or foreclosed
15 from any theory of equitable tolling, because they haven't
16 pled sufficient facts.

17 THE COURT: All right. I understand that. Even
18 after the 15th time, I think I understand it.

19 Let me ask, now, to switch to the motion to dismiss.
20 There's an argument made that because the contract was in
21 Arabic and the plaintiff doesn't read Arabic, that somehow the
22 defendant isn't bound by what the contract says.

23 Is that your argument?

24 MR. NASH: Not at all, sir. And I think you know
25 that's not my argument.

1 The argument is that in order to proceed on a breach
2 of contract claim, the plaintiff must, at a minimum, identify
3 a provision of the contract that was breached by the actions
4 of the defendant and, at a minimum, argue that at the time of
5 the breach, she was in compliance with her own obligations
6 under the contract.

7 She has admitted in the complaint that -- first of
8 all, this is -- there's no question that the plaintiffs are
9 proceeding on a written contract.

10 THE COURT: Is there an interpretation or
11 translation of it in the record?

12 MR. NASH: No. And I'll explain why.

13 THE COURT: Because you haven't put one in. That's
14 the reason.

15 MR. NASH: Well --

16 THE COURT: Or they haven't put one in.

17 MR. NASH: We haven't responded, you know, we
18 haven't responded -- we haven't answered the complaint yet.
19 We don't have any obligation at this point.

20 THE COURT: Well, I wouldn't go that far. You know
21 me better than that. I mean -- I don't read Arabic either.
22 Let me ask this, let me ask the plaintiff: Do you intend to
23 submit an interpretation or a translation of the contract?

24 MS. FRYSZMAN: Your Honor, we asked the defendants
25 for a copy of the contract. They refused to provide it to us.

1 Mrs. Tekle was not provided a copy of the contract. That's
2 one of the elements of her trafficking claim.

3 Context we've also attempted to FOIA the contract
4 from the Department of State where defendants are required to
5 lodge it when they brought her in on the A-3 visa.

6 THE COURT: And what was the response there?

7 MS. FRYSZMAN: We have not received the -- we might
8 get it in 2025, when after this case is long over, but we have
9 not yet received it from the State Department.

10 THE COURT: Well, there are time limits on the
11 Freedom of Information Act.

12 MS. FRYSZMAN: Well, all I can tell you, Your Honor,
13 is we FOIA'd it twice, we have not received it and we've
14 requested it from defendants and they refused to provide it.

15 THE COURT: All right.

16 MR. NASH: Let me address the last point first. We
17 filed a motion to dismiss the complaint because the plaintiff
18 didn't know what was in the contract. And the very next day,
19 after we filed the motion, we got a -- our first ever request
20 for a copy of the contract. And we said, Well, why -- why --
21 after you have sued us and we've moved the Court to dismiss it
22 because you don't know what's in the contract, why would we
23 provide you with a contract at that time. So that was the
24 first and only.

25 THE COURT: Just a moment. Let me ask you this:

1 Did you ever provide the plaintiff with a contract? Did your
2 client ever provide the plaintiff with a contract?

3 MR. NASH: She signed --

4 THE COURT: That isn't what I asked.

5 MR. NASH: According to the complaint --

6 THE COURT: That isn't what I asked. Did you ever
7 provide the plaintiff with a copy of the contract?

8 MR. NASH: Not to my knowledge. I don't know.

9 THE COURT: Golly, Pete, does that strike you as
10 fair?

11 MR. NASH: Well, if she never requested a copy of
12 the contract.

13 THE COURT: She is now.

14 MR. NASH: Right. After six years after signing the
15 contract, a year after the statute of limitations has expired,
16 she has asked for -- after suing us on a contract that she
17 admits she doesn't know what the terms of it are, after all of
18 those facts, then I get an e-mail from the plaintiff's counsel
19 after I've -- the day after I move to dismiss the counts
20 saying, "Oh, by the way, we should probably see what the
21 contract is."

22 Again, I don't want to suggest to the Court that
23 we're playing games. I don't have a copy of the contract.
24 We've asked our clients for the copy of the contract. They
25 don't have a copy of the contract. So it's -- even if I was

1 inclined to give plaintiff's counsel a copy of the contract, I
2 couldn't do it. So I'm not playing any games. But you know,
3 to get back to the thrust of our complaint, Your Honor --

4 THE COURT: Let me stop this. Have you you-all
5 discussed -- she's in the United States, is that right, your
6 client?

7 MS. FRYSZMAN: That's correct, Your Honor.

8 THE COURT: Have you-all discussed some reasonable
9 settlement of this matter? She only worked for them for seven
10 months.

11 MS. FRYSZMAN: We have, Your Honor. We've attempted
12 to and the defendants has shown no interest.

13 THE COURT: I beg your pardon?

14 MS. FRYSZMAN: We have attempted to and the
15 defendants, to my understanding, they have no interest.

16 THE COURT: Because it seems to me that it's a
17 fairly simple negotiation. She worked for them for seven
18 months. She doesn't claim, does she, that she wasn't paid
19 during the seven months, does she?

20 MS. FRYSZMAN: She does claim that she wasn't paid.

21 THE COURT: All right. Well, then you need to
22 settle this case.

23 MR. NASH: Your Honor, when we got this complaint,
24 we went to defense counsel with a 17-minute video tape that
25 was compiled from home movies of seven months that the

1 plaintiff lived in the defendants' home.

2 In those seven months, the home movies showed her go
3 to Jackson Hole on a ski vacation with the plaintiffs in
4 which -- in which the defendants acquired private ski
5 instructors for every member of their household staff.

6 THE COURT: Have you discussed settlement?

7 MR. NASH: She was treated -- she was paid thousands
8 of dollars over the minimum wage. She was -- she had very few
9 duties within the home. She had a wonderful life in the
10 house. And our client's -- there is a reporter from the
11 Washington Post here who is going to write a story tomorrow
12 about the fact that our clients are slave traders, because
13 they brought this woman to the house. It is -- it is
14 unbelievable the damage to our client's reputation that is
15 being brought about by this lawsuit and our clients have no
16 interest in settling. The money -- they're members of the
17 Saudi royal family. The money that it would take to settle
18 this case would be -- could be found in the cushions of their
19 couch. I have no doubt. But the damage to their reputation
20 of this woman, who they first brought from -- a poverty in
21 Eritrea to Saudi Arabia, then from Saudia Arabia to the United
22 States, who they treated wonderfully while she was a member of
23 their household, and taught her to ski, and brought her to Key
24 West and allowed her to lounge by the pool.

25 During the seven months that she worked for them,

1 they treated her wonderfully, they treated her with respect,
2 and generosity and dignity, and then she walked away because
3 they were going back to Saudia Arabia and she didn't want to
4 go back to Saudia Arabia. And we have evidence. This isn't
5 our belief. We have evidence that she walked away, because
6 she didn't want to go back to Saudia Arabia.

7 And then she was in the country illegally because
8 the terms of her Visa were that she had to be working for this
9 family in order to stay in the United States. But she found a
10 way to stay in the United States because she went to ICE and
11 she complained that she was the victim of trafficking. And
12 under the law, victims of trafficking are accorded a visa.
13 And that's why she is in the United States today is because
14 she reported this to ICE.

15 THE COURT: All right. That's useful information,
16 which I'm sure the Washington Post will appreciate and
17 probably ignore.

18 MR. NASH: And let me make one more point for Your
19 Honor and the Washington Post, which is that Ms. Tekle is
20 currently being investigated by the Department of Justice and
21 ICE for fraudulently obtaining a visa by making these
22 misrepresentations.

23 THE COURT: Well, that's irrelevant to what's before
24 the Court today.

25 MS. FRYSZMAN: Your Honor, if I could just say. We

1 have met with the Department of Justice and they have assured
2 us that Ms. Tekle is not under investigation. That is
3 categorically false, as far as I know. The only people I know
4 that are under investigation are defendants. And that's just
5 categorically false. And I just hope we could stick to the
6 issues that are noticed, which is the breach of contract
7 claim.

8 THE COURT: All right. I think that's an
9 appropriate suggestion.

10 What I'm going to do is I'm going to grant the
11 motion to dismiss, but with leave to amend.

12 I think the arguments Mr. Nash makes have some
13 force. That is to say that you need to allege all the facts
14 that you have. You're correct when you argue it's either
15 direct or indirect, but you've got to tie this to some extent
16 to the defendants.

17 I don't think tolling would be warranted if she were
18 just frightened of somebody who was threatening her, unrelated
19 to the defendants. That's Mr. Nash's point. But if you have
20 facts, I need to know them.

21 Now, the issue of the contract is troublesome to me.
22 It's hard to understand the situation where parties enter into
23 a contract and a party is not provided a copy of the contract.
24 But there must be a contract somewhere. I urge you to
25 exercise the time limits that are imposed by law on the

1 Department of State to produce documents.

2 MS. FRYSZMAN: Your Honor, if I might speak to that.
3 Federal law requires the defendants to provide the plaintiff
4 with a copy of the contract. So they are in violation of the
5 federal law and of the requirements of --

6 THE COURT: Look, I don't want to hear anymore about
7 accusations.

8 MS. FRYSZMAN: That's why we don't have the
9 contract, is that --

10 THE COURT: Has the Department of State told you
11 that they don't have it because they haven't provided it?

12 MS. FRYSZMAN: The Department of State is not within
13 my control.

14 THE COURT: Well, you filed a FOIA. That's within
15 your control. It's also within your control to move to compel
16 response to it within a particular time.

17 Have you done that?

18 MS. FRYSZMAN: We will, Your Honor.

19 THE COURT: Have you done that?

20 MS. FRYSZMAN: We have not yet. But, Your Honor,
21 she knows what the provision of the contract is. So this is
22 not a situation where she's unaware of what the --

23 THE COURT: Is that in your complaint?

24 MS. FRYSZMAN: It is, Your Honor.

25 THE COURT: How does she know that?

1 MS. FRYSZMAN: Because she knows she was promised
2 \$4,500 a month in pay and she knows that she did not receive
3 it.

4 THE COURT: That's in the complaint.

5 MS. FRYSZMAN: That is in the complaint --

6 THE COURT: That's the provision -- just a moment.
7 When I start, you stop.

8 MS. FRYSZMAN: Apologies, Your Honor.

9 THE COURT: You've got to address what I'm thinking.
10 And you don't do that if you're talking at the same time I am.

11 I did exactly what you're doing when I argued when I
12 stood where you're standing and I never realized how
13 irritating it can be.

14 It is irritating to a judge. Mr. Nash knows that
15 because he's heard me complain about that in the past.

16 Let's go back to -- I'm going to grant the motion,
17 but with leave to amend. And I want you to ensure that you
18 put in all the facts that you have that you can plead under
19 Rule 11 that would warrant an inference that there was some
20 reason for tolling. That there's a warrant for tolling. And
21 I'll decide the matter without further oral argument once you
22 do that, because there will be motions after that and I'll
23 decide it on the basis of the motions. I don't need further
24 oral argument.

25 Now, the issue of the contract I'll also decide on

1 the basis of the arguments that I've already heard. It's a
2 threshold motion.

3 I'm going to deny the motion to strike, because I
4 think it is premature. It looks to me like it may be
5 relevant. I don't know. I don't know. So I'll deny the
6 motion to strike. There was one other motion, Mr. Nash.

7 MR. NASH: There's not another motion, Your Honor.
8 I would just suggest, the principal argument that the
9 plaintiff has made as to the relevance of the material --
10 that's -- that relates to the motion to strike paragraphs 14
11 through 16, is that it goes to the equitable tolling issue.
12 And so if Your Honor ultimately decides not -- to dismiss --

13 THE COURT: Renew your motion then, but I'm not
14 granting it now.

15 MR. NASH: I was just going to suggest that you hold
16 it under advisement.

17 THE COURT: No, I'm not going to hold it under
18 advisement, I'm going to deny it, and then you can renew it if
19 it's necessary.

20 MR. NASH: Thank you.

21 THE COURT: All right. Anything further in this
22 matter today?

23 MR. NASH: You asked -- the question you asked me:
24 Were there any other pending motions? There are none.

25 THE COURT: All right. And you agree with that?

1 MS. FRYSZMAN: Yes, Your Honor. The defendants did
2 not move to dismiss the other counts in the complaint.

3 THE COURT: Yes. I'm aware of that.

4 MS. FRYSZMAN: And then I just wanted to be clear
5 that I said that we had alleged she knew what provision of the
6 contract was breached. It was the payment provision and she
7 --

8 THE COURT: Yes, I'm aware of that.

9 MR. NASH: Your Honor, our obligation to answer the
10 complaint is contingent on Your Honor's ruling on the motion
11 to dismiss. And I just want to be clear, when the time --

12 THE COURT: I will make clear in the order that the
13 time for answering or otherwise filing responsive pleading is
14 tolled until the amended complaint is filed, and after that,
15 the rules will take over and govern what the times are.

16 MR. NASH: Thank you.

17 THE COURT: Under Rule 12.

18 Anything further in this matter today?

19 MS. FRYSZMAN: No. Thank you, Your Honor.

20 MR. NASH: No, Your Honor. Thank you.

21 THE COURT: All right. Well, it's -- thank you for
22 your arguments.

23
24 **(Proceedings adjourned at 12:55 p.m.)**
25

CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Motions in the case of the **SIMRET SEMERE TEKLE versus NOUF BIN NAYEF ABUL-AL SAUD, et al**, Civil Action No. 1:18-CV-211, in said court on the 7th day of September, 2018.

I further certify that the foregoing 36 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this September 19, 2018.



Tonia M. Harris, RPR
Official Court Reporter